



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 33303412

Date: AUG. 16, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a cardiac physiologist, seeks classification under the employment-based, first-preference (EB-1) immigrant visa category as a noncitizen with “extraordinary ability.” *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). Successful petitioners for U.S. permanent residence in this category must demonstrate “sustained national or international acclaim” and extensively document recognition of their achievements in their fields. *Id.*

The Director of the Nebraska Service Center denied the petition. Although finding that the Petitioner met the initial evidentiary criteria, the Director’s final merits determination concludes that he did not establish himself as one of that small percentage to rise to his field’s very top. On appeal, the Petitioner contends that the Director disregarded evidence.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo’s, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that he has established his receipt of sufficient acclaim and recognition in his field to demonstrate extraordinary ability. We will therefore sustain the appeal.

I. LAW

To qualify as a noncitizen with extraordinary ability, a petitioner must demonstrate that they:

- Have “extraordinary ability in the sciences, arts, education, business, or athletics;”
- Seek to continue work in their field of expertise in the United States; and
- Through their work, would substantially benefit the country.

Section 203(b)(1)(A)(i)-(iii) of the Act. The term “extraordinary ability” means expertise commensurate with “one of that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2).

Evidence must demonstrate a noncitizen's receipt of either "a major, international recognized award" or satisfaction of at least three of ten lesser evidentiary criteria. 8 C.F.R. § 204.5(h)(3)(i-x).¹ If a petitioner meets either standard and all other preliminary requirements, USCIS must then make a final merits determination as to whether the record, as a whole, establishes sustained national or international acclaim and recognized achievements placing them among the small percentage at their field's very top. *Kazarian v. USCIS*, 596 F.3d 1115, 1119-20 (9th Cir. 2010); *see generally* 6 *USCIS Policy Manual* F.(2)(B), www.uscis.gov/policy-manual.

II. ANALYSIS

A. The Petitioner

The record shows that the Petitioner, a native and citizen of India, earned a bachelor of medicine and surgery degree in his home country.² He then came to the United States to serve a medical residency and fellowships at university medical centers. He currently works as a cardiac physiologist for a U.S. hospital. He provides patients with cardiac implantable electronic devices (CIEDs), such as permanent pacemakers and cardioverter defibrillators.

Since 2019, the Petitioner has co-authored seven research papers published by peer-reviewed journals in his field. His research has generated more than 900 citations from doctors and scientists in 55 countries. He seeks to permanently continue his research and clinical activities in cardiac physiology in the United States.

The record does not demonstrate – nor does the Petitioner claim – his receipt of a major international recognized award. He therefore had to meet at least three of ten initial evidentiary requirements. *See* 8 C.F.R. § 204.5(h)(3)(i-x). The record supports the Director's findings that he successfully submitted evidence of:

- His participation as a judge of others' work in his field under 8 C.F.R. § 204.5(h)(3)(iv);
- His original contributions of major significance in his field under 8 C.F.R. § 204.5(h)(3)(v); and
- His authorship of scholarly articles in the field under 8 C.F.R. § 204.5(h)(3)(vi).

As the Petitioner has met the required amount of initial evidentiary criteria, we will next review the Director's final merits determination.

B. The Final Merits Determination

To establish eligibility, the Petitioner must demonstrate that he has sustained national or international acclaim and that his achievements have been recognized in his field of expertise. Section 203(b)(1)(A)(i) of the Act. His level of acclaim and recognition must identify him as one of that small

¹ If an evidentiary standard does not "readily apply" to a petitioner's occupation, they may submit "comparable evidence" to establish eligibility. 8 C.F.R. § 204.5(h)(4).

² Indian bachelor's of medicine and surgery degrees generally equate to U.S. medical degrees. *See* Am. Assoc. of Collegiate Registrars & Admission Officers, Electronic Database of Global Education, www.aacrao.org.

percentage who have risen to the field's very top. 8 C.F.R. § 204.5(h)(2) (defining the term "extraordinary ability").

When making a final determination, USCIS considers any potentially relevant evidence of record, even if it does not fit one of the initial regulatory criteria or was not presented as comparable evidence. *See generally* 6 USCIS Policy Manual F.(2)(B)(2). The Petitioner bears the burden of explaining the significance of his evidence and how it demonstrates his achievement of sustained acclaim and recognition in his field. *Id.* The evidence's type and quality determines the petition's approval or denial. *Id.*

The Director found insufficient evidence that the Petitioner sustained acclaim and recognition commensurate with one of that small percentage who has risen to his field's very top. The Director acknowledged that the Petitioner has "proficiency and promise in the field." But the Director concluded that he did not submit "extensive documentation that his efforts have brought him the requisite sustained acclaim at a national or international level."

The Petitioner persuasively argues that the Director overlooked evidence of his acclaim and recognition in the field. The Director found that the Petitioner's published research papers do not demonstrate his "influence" or the impact of his research on his field. But he submitted evidence indicating that his research had global importance. Studies he helped to conduct in 2020 found that the anti-malarial drug combination of hydroxychloroquine and azithromycin – then widely used to treat COVID-19 patients – increased the risk of life-threatening heart arrhythmias. Letters from experts in the field state that his research not only safeguarded COVID-19 patients but also reduced healthcare costs. Major U.S. news media reported that, days after publication of his first study's results, the U.S. Food and Drug Administration warned Americans that the anti-malarial drugs could cause heart problems. The Director found that the news articles and related documentation did not meet the initial evidentiary requirement regarding published material about a petitioner relating to their work in their field. *See* 8 C.F.R. § 204.5(h)(3)(iii). But the articles still demonstrate the urgent, global importance of his research. *See* 6 USCIS Policy Manual F.(2)(B)(2) (requiring USCIS to consider "any potentially relevant evidence in the record, even if such evidence does not fit one of the . . . regulatory criteria").

The prior year, the Petitioner also worked on a study regarding left ventricular assist devices (LVADs), which act as pumps for failing hearts of patients with severe pulmonary hypertension. The research shows that LAVDs significantly improve these patients' pulmonary artery pressure. An assistant U.S. medical professor explained that LVADs are options for patients with severe pulmonary hypertension preventing them from safely receiving heart transplants. The assistant professor, who has never worked with the Petitioner, said that the Petitioner's research "ensur[es] that clinicians are aware of available treatment options and, as such, his research advances efforts to improve public health."

Further, in 2021, the Petitioner first-authored research leading to a general reduction of discharge times for CIED-implant patients, from 24 hours to six hours after their operations. His research showed that 90% of CIED-implant patients who developed acute complications developed them within six hours of their operations or after 24 hours. A U.S. associate professor of internal medicine, who also has never worked with the Petitioner, stated that the Petitioner "holds a unique place in the field, as his work has consistently updated current guidelines on clinical management for cardiac disorders."

The Director also disregarded the Petitioner's citation rate. The Petitioner submitted evidence that the number of citations to his research over the past five years places him within the top 1% of authors in the clinical medicine category. "Depending on the field and the comparative data the petitioner provides, such evidence may indicate a person's high overall standing for the purpose of demonstrating that the person is among the small percentage at the top of the field." 6 *USCIS Policy Manual* F.(2)(B)(2).

Based on these overlooked materials, the Petitioner has demonstrated by a preponderance of the evidence that he has received national and international acclaim and recognition of achievements in his field that place him among that small percentage who have risen to his field's very top.

ORDER: The appeal is sustained.